

Exhibit 2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHASOM BROWN, MARIA NGUYEN, AND) C-20-03664 LHK
WILLIAM BYATT, INDIVIDUALLY AND)
ON BEHALF OF ALL SIMILARLY) SAN JOSE, CALIFORNIA
SITUATED,)
) APRIL 21, 2022
)
PLAINTIFF,)
) PAGES 1-220
VS.)
)
GOOGLE LLC AND ALPHABET INC.,)
)
DEFENDANTS.)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUSAN VAN KEULEN
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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ALSO PRESENT: DOUGLAS BRUSH
TIMOTHY SCHMIDT
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NORA PUCKETT

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1 IT IS GOOD TO SEE EVERYONE. IT'S GOOD TO HAVE EVERYBODY
2 IN PERSON IN COURT, SO THANK YOU ALL FOR THAT EFFORT.

3 WE ARE WEARING MASKS TODAY. WE WILL PROCEED WITH CAUTION.

4 AND WHEN WE HAVE A WITNESS ON THE STAND -- OH, THEY
5 ADJUSTED MY MONITOR. THAT'S NOT GOING TO WORK, IS IT?

6 BUT WHEN WE HAVE A WITNESS ON THE STAND, I MAY ASK THE
7 WITNESS AND THE SPEAKER TO TAKE OFF THEIR MASKS SO THAT THE
8 COURT REPORTER CAN HEAR AND BE SURE THAT OUR RECORD IS
9 COMPLETE.

10 ALL RIGHT. WE ARE ON TODAY FOR A PROCEEDING THAT FOLLOWS
11 PLAINTIFFS' MOTION FOR DISCOVERY SANCTIONS, AND I HAVE HAD SOME
12 CONVERSATIONS WITH COUNSEL AS TO HOW WE WILL PROCEED.

13 AND WHAT WE WILL DO IS I WILL FIRST HEAR A SHORT, BRIEF
14 OPENING POSITION STATEMENT FROM EACH SIDE; AND THEN WE WILL
15 PROCEED FIRST IN HEARING MODE ON THE MOTION WITH A --
16 PLAINTIFFS WILL MOVE THROUGH AND MAKE THEIR POINTS AND THEN,
17 WHEN APPROPRIATE, CALL A WITNESS. I UNDERSTAND THERE'S ONE
18 WITNESS ON THE PLAINTIFFS' SIDE.

19 AND I HAVE RECEIVED LOTS AND LOTS OF EXHIBITS FROM ALL THE
20 PARTIES, SO TO THE EXTENT THAT THERE ARE ADDITIONAL DOCUMENTS
21 THAT ARE NOT ALREADY IN THE RECORD BEFORE THE COURT THAT A
22 PARTY WANTS TO MOVE INTO EVIDENCE IN THESE PROCEEDINGS, WE'LL
23 HANDLE THAT.

24 ALL RIGHT. SO WITHOUT FURTHER DELAY OR ADO, MR. BOIES,
25 LET'S START WITH PLAINTIFF.

1 MR. BOIES: THANK YOU, YOUR HONOR.

2 MAY IT PLEASE THE COURT.

3 WHAT I'LL TRY TO DO IS BRIEFLY SUMMARIZE SEVEN KEY POINTS
4 THAT I THINK MAY BE HELPFUL TO THE COURT IN FRAMING THE
5 PRESENTATION THAT WE'RE GOING TO GIVE TODAY.

6 FIRST -- AND I DON'T THINK THIS SHOULD BE IN DISPUTE --
7 DATA AND DOCUMENTS CONCERNING INCOGNITO USE AND USERS ARE
8 RELEVANT. THEY'RE RELEVANT TO DAMAGES, FOR EXAMPLE, THE EXTENT
9 OF THE USE; THEY'RE RELEVANT TO LIABILITY, THE TYPE AND NATURE
10 OF USE; AND ACCORDING TO GOOGLE, THEY'RE RELEVANT TO CLASS
11 CERTIFICATION.

12 THE COURT IS WELL AWARE, I THINK, OF PLAINTIFFS' REPEATED,
13 AND I MIGHT SAY URGENT, EFFORTS TO OBTAIN DOCUMENTS AND DATA
14 CONCERNING INCOGNITO USE AND USERS.

15 SECOND, I DON'T KNOW IF WE -- IF THESE ARE BEING DISPLAYED
16 OR NOT, THEY'RE NOT COMING UP ON THE MONITOR HERE.

17 THE CLERK: YOU WOULD NEED TO TELL ME. WHAT DID YOU
18 WANT DISPLAYED? PLAINTIFFS'?

19 MR. BOIES: MAY I HAVE JUST A MOMENT, YOUR HONOR?

20 THE COURT: YES.

21 THE CLERK: IS IT PLAINTIFFS' SIDE?

22 MR. MAO: YES, PLAINTIFFS' SIDE.

23 THE CLERK: I JUST HAVE TO DO A LITTLE TOGGLE, SO I
24 JUST NEED TO KNOW.

25 MR. BOIES: THANK YOU.

1 SECOND, IN ORDER TO TRACK AND ANALYZE INCOGNITO BROWSING,
2 GOOGLE DEVELOPED INCOGNITO DETECTION SIGNALS. THESE SIGNALS
3 WERE ONE BIT FIELDS THAT WERE TURNED ON AND OFF BASED ON
4 WHETHER THE INCOGNITO MODE WAS BEING USED.

5 THESE SIGNALS INCLUDE IS_CHROME_INCOGNITO,
6 MAYBE_CHROME_INCOGNITO, AND IS_CHROME_NON_INCOGNITO.

7 GOOGLE STILL -- AND I WANT TO EMPHASIZE THIS, YOUR
8 HONOR -- STILL HAS NOT DISCLOSED WHETHER THERE ARE OTHER FIELDS
9 THAT ARE USED TO LOG INCOGNITO USE.

10 THIRD, INCOGNITO DETECTION BITS DIRECTLY CONCERN
11 INCOGNITO'S USE AND USERS.

12 FIRST, WITH RESPECT TO THAT, GOOGLE ITSELF DESCRIBES THE
13 IS_CHROME_INCOGNITO SIGNAL AS REPRESENTING IF AN ENTRY COMES
14 FROM A CHROME WEB BROWSER IN INCOGNITO MODE.

15 GOOGLE ITSELF DESCRIBES THE MAYBE_CHROME_INCOGNITO SIGNAL
16 AS ACCURATELY TRACKING INCOGNITO USAGE.

17 AND LATER TODAY, WE'LL REFER TO SOME DOCUMENTS, INTERNAL
18 GOOGLE DOCUMENTS THAT TRACK AND ANALYZE AND DECIDE THAT THE
19 INCOGNITO TRACKING IS ACCURATE.

20 NOW, THESE SIGNALS AND GOOGLE'S USE OF THEM ARE RELEVANT
21 TO THE USE AND USERS OF INCOGNITO.

22 HOW ACCURATE THEY ARE AND EXACTLY HOW THEY ARE USED AT
23 GOOGLE MAY BE SUBJECT TO DISPUTE. WE MAY BE DEBATING THAT
24 TODAY.

25 BUT REGARDLESS OF HOW ACCURATE OR INACCURATE GOOGLE CLAIMS

1 SUCCESSFUL. THE SLIDE HERE SPEAKS FOR ITSELF.

2 BUT WE CAN SEND YOU -- WE CAN SUBMIT, IF YOU WISH, SOME OF
3 THE TRANSCRIPTS -- WE STARTED AT SOME POINT HALFWAY THROUGH
4 RECORDING BY ZOOM SOME OF THESE HEARINGS AND THEN HAVING
5 TRANSCRIPTS MADE.

6 BUT THE SPECIAL MASTER HAS SAID -- THIS IS FROM THE
7 TRANSCRIPT OF FEBRUARY 16TH, 2022: "I MEAN WE HAVE TO ASSUME
8 THERE'S A GOOD FAITH EFFORT THAT GOOGLE HAS MADE SOME ATTEMPT
9 ON THE SEEMINGLY SIGNIFICANT MATTER TO USE THE TOOLS IDENTIFIED
10 TO SEARCH THE DATA IN A RESPONSIVE AND PRODUCTIVE WAY."

11 FROM THE FEBRUARY 25TH, 2022 TRANSCRIPT: "AGAIN, LET'S
12 NOT ALWAYS FRAME EVERYTHING AS IF THERE WAS SOME MALICE OR
13 TRYING TO HIDE THINGS. I MEAN, THIS IS A COMPLICATED ISSUE."
14 THAT WAS FEBRUARY 25TH.

15 OUR HEARING ON MARCH 5TH: "WHAT'S BEFORE ME, YES, YOU
16 HAVE -- BOTH SIDE HAVE WORKED TOGETHER."

17 THIS IS AFTER THE STUNNING REVELATIONS ABOUT THE BITS.

18 AND FROM A HEARING JUST MARCH 23RD: "LOOK, WE WOULDN'T BE
19 IN THIS PROCESS IF IT WAS EASY. I MEAN, THERE ARE COMPLEXITIES
20 TO THIS THAT WE'RE WORKING THROUGH AND I BELIEVE BOTH PARTIES
21 ARE DOING IN GOOD FAITH."

22 AND THAT'S WHERE I WANT TO CLOSE MY PORTION, YOUR HONOR,
23 BECAUSE THAT'S ALL THAT'S HAPPENED HERE. YOU HAVE PARTY --

24 THE COURT: LET ME ASK A COUPLE QUESTIONS,
25 MR. SCHAPIRO.

1 MR. SCHAPIRO: SURE.

2 THE COURT: IS GOOGLE -- IS IT CORRECT THAT GOOGLE
3 HAS NOT ANSWERED THE QUESTION AS TO WHETHER OR NOT THERE ARE
4 OTHER FIELDS THAT IDENTIFY INCOGNITO TRAFFIC?

5 MR. SCHAPIRO: I'M GOING TO NEED TO CONFER WITH
6 MR. ANSORGE. IT IS NOT A SIMPLE THING TO DO.

7 MS. TREBICKA: IT'S COMPLICATED. I CAN EXPLAIN,
8 BUT --

9 MR. SCHAPIRO: WE HAVE NOT, BECAUSE IT'S A DIFFICULT
10 THING TO DO, AS YOU WILL HEAR FROM SOME OF THE WITNESSES WHO
11 WILL BE TESTIFYING TODAY.

12 THE COURT: ALL RIGHT. SO THERE, AT LEAST IN THEORY,
13 COULD BE ADDITIONAL FIELDS --

14 MR. SCHAPIRO: YES.

15 THE COURT: -- THAT ARE, YOU KNOW, MAYBE INCOGNITO,
16 OF THAT ILK, THAT HAVE NOT YET BEEN IDENTIFIED.

17 MS. TREBICKA: IN THEORY, YOUR HONOR.

18 TO THE BEST OF OUR KNOWLEDGE, WITH THE DUE DILIGENCE THAT
19 WE'VE DONE, I DON'T BELIEVE SO.

20 BUT I'D LIKE ALSO TO POINT OUT THAT INCOGNITO IS NOT A
21 TERM THAT'S USED ONLY WITH RESPECT TO CHROME BROWSING. IT HAS
22 DIFFERENT USES WITHIN GOOGLE AS WELL. SO IT'S NOT A SIMPLE,
23 LET'S SEARCH FOR INCOGNITO AND IT'LL HIT ON ONLY RELEVANT
24 RESULTS.

25 MR. SCHAPIRO: FOR EXAMPLE, YOUTUBE INCOGNITO, ALL

1 KINDS OF OTHER SERVICES. AND SO -- BUT WE WANT TO BE CAREFUL,
2 TO THE BEST OF OUR KNOWLEDGE IS I THINK THE ANSWER.

3 BUT FINDING OURSELVES HERE AND BEING, YOU KNOW, KNOWING
4 WHAT -- IT'S VERY IMPORTANT TO BE ACCURATE.

5 THE COURT: AND OBVIOUSLY IT'S DISPUTED AS TO WHETHER
6 OR NOT ALL LOGS WITH THE FIELDS WE'VE BEEN TALKING ABOUT HAVE
7 BEEN PRODUCED, AND I KNOW PLAINTIFFS HAVE A VIEW THAT THEY HAVE
8 NOT.

9 WHEN YOU SAY ALL LOGS AS YOU'RE REFERENCING A COUPLE OF
10 SLIDES AGO, BEFORE THE SPECIAL MASTER, AND ALL OF THE LOGS WERE
11 IDENTIFIED, ARE WE TALKING ABOUT THE [REDACTED] LOGS?

12 MR. SCHAPIRO: SO I THINK WE'RE TALKING ABOUT LOGS
13 THAT ARE SEARCHED RATHER THAN LOGS THAT HAVE BEEN PRODUCED.
14 BUT, YES, THE [REDACTED] ARE INCLUDED.

15 MR. ANSORGE: AND THE [REDACTED] LOG AS WELL.

16 MR. SCHAPIRO: AND THE LOGS FROM THE ADDITIONAL --
17 FROM THE ARTIST FORMERLY KNOWN AS --

18 THE COURT: SO IT'S THE [REDACTED], THE [REDACTED] AND THE [REDACTED]?

19 MR. SCHAPIRO: YES.

20 THE COURT: ALL RIGHT. THOSE ARE MY QUESTIONS.

21 MR. SCHAPIRO: THANK YOU, JUDGE.

22 MS. TREBICKA WILL NOW JUST ADDRESS TWO SHORTER ISSUES.

23 THE COURT: ALL RIGHT.

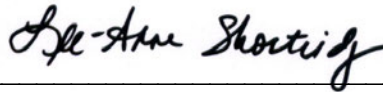
24 MS. FANTHORPE, I ASSUME NO WORD YET FROM THE JUDGE?

25 THE CLERK: I'M WATCHING.

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: APRIL 29, 2022